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Inside the Alcohol Industry's Lobbying Blitz on Cannabis

The lobbying boom, mainly involving trade associations, comes as the alcohol industry considers whether the booming legalized marijuana business represents a competitor or corollary.

By C. Ryan Barber | February 11, 2019

For the past several years, as the movement to legalize marijuana spread across the country, Mark Gorman heard a familiar refrain emerging from advocates who are supporting measures to approve medical or recreational cannabis use.

In Michigan, where voters last year approved recreational cannabis use, there was a Coalition to Regulate Marijuana Like Alcohol. The Drug Policy Alliance, a prominent group supporting legalization measures, said it "believes marijuana should be removed from the criminal justice system and regulated like alcohol and tobacco. In Congress, there is a "Regulate Marijuana Like Alcohol Act."



(Photo: iStockphoto)

So last year, Gorman, a top lobbyist for liquor producers, began to meet with lawmakers in Congress about the growing number of bills addressing cannabis and the public discourse connecting proposed regulatory schemes for cannabis to those in place for alcohol.

"We thought, 'alright, let's take 'em up on that,'" said Gorman, the senior vice president of government relations for the Distilled Spirits Council, whose members include Bacardi, Beam Suntory and Pernod Ricard. "We want to make sure they don't just use that to get in the door and go in a different direction."

The lobbying blitz, mainly involving trade associations, comes as the alcohol industry considers whether the booming legalized marijuana business represents a competitor or corollary—or perhaps some hybrid of the two. In interviews, alcohol industry lobbyists stressed they are neutral on the issue of legalizing marijuana and described their federal advocacy as largely educational, focused on building an understanding of the regulatory regime for beer, wine and liquor.

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The Distilled Spirits Council was among several groups—including other leading trade associations for the alcohol industry and Altria, a top manufacturer of tobacco products—that began lobbying on cannabis for the first time in 2018, according to a National Law Journal review of disclosures.

The spirits council is pushing to ensure the taxation and legalization of cannabis is "at least comparable" to the regulatory schemes for liquor, according to its list of "approved marijuana policies. And it is insisting on the development of a standard measurement to determine whether a consumer of cannabis is impaired, similar to the blood alcohol content threshold used to determine whether a driver is drunk.

Among the other prominent trade groups that lobbied on cannabis were the Wine and Spirits Wholesalers of America and the Beer Institute, a trade group that represents Anheuser-Busch, MillerCoors, Heineken and the beer division of Constellation Brands, which brews Modelo and Corona.

Some of the lobbyists said the alcohol industry sees a business opportunity in the burgeoning market for legalized marijuana. They pointed to Constellation Brands' multibillion-dollar investment in Canopy Growth, a Canadian cannabis company, along with growing interest in infusing beverages with cannabis.

"Over the past year, we've come to better understand the cannabis market, the tremendous growth opportunity it presents, and Canopy's market-leading capabilities in this space," Constellation Brands CEO Rob Sands said (<https://www.cnbc.com/2018/08/15/corona-maker-constellation-ups-bet-on-cannabis-with-4-billion-investm.html>) in a statement last year.

Last month, Distilled Spirits Council released market research (<https://www.distilledspirits.org/news/new-distilled-spirits-council-study-shows-no-impact-on-spirits-sales-from-legalized-recreational-marijuana/>) showing that the legalization of marijuana for recreational use had no effect on alcohol sales in Colorado, Oregon or Washington—the three states where recreational marijuana has been on the market the longest.

Gorman said the Distilled Spirits Council's decision to begin lobbying at the federal level came out of a "slow, natural progression" that picked up in intensity following the 2016 passage of a referendum to legalize marijuana in California. The votes in California and Michigan are "just creating a sense of inevitability" of even greater national embrace of cannabis, Gorman said.

The alcohol industry hasn't only let its lobbying groups do the talking. Manufacturers of distilled spirits themselves are asserting their voices.

Terry McNaughton, the Washington-based senior director for public affairs at Beam Suntory, the company behind such products as Jim Beam and Knob Creek whiskey, lobbied on a U.S. Senate bill that proposed removing marijuana from the list of

controlled substances. A spokesperson for the company declined to comment.

Constellation Brands, the maker of Corona, Modelo and Svedka Vodka, has hired the Washington-based lobbying firm Invariant to monitor various pieces of cannabis-related legislation along with budget appropriations language concerning "Justice Department action on cannabis issues."

The Invariant team includes Heather Podesta, the firm's founder and CEO, along with Anne MacMillan, a former senior policy adviser for House Speaker Nancy Pelosi, D-California, and Annie Palisi, a onetime aide to former House Speaker John Boehner, R-Ohio. Last year Boehner, who is not lobbying on cannabis, joined (<https://www.nytimes.com/2018/04/11/us/politics/boehner-cannabis-marijuana.html>) the board of a prominent marijuana player named Acreage Holdings.

Cannabis lobbying flourishes in Washington

The cannabis industry's lobbying presence in Washington has grown steadily in recent years. The Cannabis Trade Federation, the National Cannabis Industry Association and the California Cannabis Industry Association are now regular advocates, and they've also given work to outside lobbying firms.

The Cannabis Trade Federation has hired lobbyists with experience in the two parts of government at the forefront of marijuana industry's mind: Congress and the Justice Department.

Since 2017, the group has retained a team at Brownstein Hyatt Farber Schreck (<https://www.law.com/law-firm-profile/?id=2568&name=Brownstein-Hyatt-Farber-Schreck>), including William Moschella, a Washington-based partner at the firm who served as the Justice Department's assistant attorney general for legislative affairs under the George W. Bush administration.

Between December and January, the federation added the Raben Group and VS Strategies—a firm specifically focused on the legalized marijuana industry—to its lobbying stable. The federation's team at the Raben Group includes Robert Raben, who served as assistant attorney general for legislative affairs during the Clinton administration.



William Moschella of Brownstein Hyatt Farber Schreck. (Courtesy photo)

"There's a natural progression as the industry matures—it's more established, more states get involved—it's going to naturally lead to more law firms, more regulators, more governments," Moschella said. "It just means more involvement on all of those levels."

In October, the California Cannabis Industry Association hired Saphira Galoob, chief executive and principal of the Liaison Group, which bills itself as the only Washington-based lobbying firm focused exclusively on the cannabis industry. Galoob signed on last year to also lobby for the cannabis investment firm Acreage Holdings.

As more states legalize marijuana to some extent within their borders, members of Congress and their staffs have increasingly turned to the alcohol industry for its thoughts on how to properly regulate cannabis, according to industry lobbyists.

The American Beverage Licensees began lobbying Congress in late 2018 to educate lawmakers on the regulatory scheme for beer, wine and spirits, said John Bodnovich, the trade group's executive director.

"I think we looked at what's going on in Congress, looked at the bills, looked at how people are talking about it in terms of regulating it like alcohol," John Bodnovich, executive director of the American Beverage Licensees, said. "For us, it's just a prudent time to make sure we're paying attention and educating people on how alcohol is regulated, so they know exactly what they're talking about and all that goes with that."

Bodnovich added: "Our members are experts in operating in a regulated system, selling an age-restricted product at retail."

Watching the Justice Department

The Trump administration has brought mixed messages for the legalized marijuana industry. President Trump's first U.S. attorney general, Jeff Sessions, was avowedly anti-marijuana, but there were no public signs the department had ramped up enforcement inside states that had legalized marijuana.

Sessions [revoked](https://www.law.com/therecorder/2018/01/04/james-coles-marijuana-memo-just-got-revoked-heres-what-he-thinks-about-that/) (<https://www.law.com/therecorder/2018/01/04/james-coles-marijuana-memo-just-got-revoked-heres-what-he-thinks-about-that/>) the Obama-era "Cole memo"—named after then deputy attorney general James Cole—that said the department would take a largely hands-off stance within states that adopted recreational schemes. The Justice Department's maneuvering caused some angst, but so far there's been no tangible sign that enforcers are taking a different course than their Obama-era counterparts.

Last year, Trump said he would support the States Act, a bill that calls for exempting state-licensed cannabis businesses from the Controlled Substance Act, freeing them from fear of federal prosecution. If passed, the bill could result in the cannabis industry receiving more access to traditional banking services, assuaging concerns within the financial sector about doing business with companies whose products are subject to a federal prohibition.

Trump's position, combined with growing support among Republicans and Democrats, has fueled hope within the cannabis industry that the States Act could provide a rare area of bipartisan consensus in a divided Congress.



William Barr appears for his confirmation hearing. (Photo: Diego M. Radzinschi / ALM)

William Barr, the [Kirkland & Ellis \(<https://www.law.com/law-firm-profile/?id=173&name=Kirkland-&Ellis-LLP>\)](https://www.law.com/law-firm-profile/?id=173&name=Kirkland-&Ellis-LLP) counsel whose nomination for attorney general is [pending \(<https://www.law.com/2018/12/13/higher-law-on-marijuana-is-barr-better-big-laws-ma-work-pot-pilot-licenses-yes-theres-a-case/>\)](https://www.law.com/2018/12/13/higher-law-on-marijuana-is-barr-better-big-laws-ma-work-pot-pilot-licenses-yes-theres-a-case/), testified recently he's not going to "go after companies that have relied on the Cole memorandum." Still, he called the tension between state and federal law "untenable."

"My approach to this would be not to upset settled expectations and the reliance interests that have arisen as a result of the Cole memorandum. Investments have been made, so there's been reliance on it. I don't think it's appropriate to upset those interests," Barr said. "However, I think the current situation is untenable and really has to be addressed. It's almost like a backdoor nullification of federal law."

On Wednesday, the House Financial Services Committee announced that a subcommittee will hold a hearing Feb. 13 titled "Challenges and Solutions: Access to Banking Services for Cannabis-Related Businesses."

Leading up to the November midterms, the two co-sponsors of the States Act, US. Reps. David Joyce, R-Ohio, and Earl Blumenauer, D-Oregon, said the bill would pass in the current Congress regardless of which party controlled the House.

"Our lobbyists are engaged in conversations on the Hill with both parties all the time, and that includes leadership," said Neal Levine, CEO of the Cannabis Trade Federation. "We have not heard anything that would indicate that what both David Joyce and Blumenauer said is not true. That's not to downplay how difficult a task it will be."

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Cannabis Chocolate Bars Landed This Pilot in Trouble. He's Now in the DC Circuit. (https://at.law.com/wJHht6?cmp=share_twitter)

Feds Should Be 'Banging the Drum the Loudest' for Cannabis Industry Banking (https://at.law.com/tVxFf7?cmp=share_twitter)

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